V. ADMINISTRATION

A. ENFORCEMENT

- 1. This By-Law shall be enforced by the Building Commissioner.
- 2. If the Building Commissioner shall be informed or has reason to believe that any provision of this By-Law or of any permit or decree thereunder has been, is being, or is likely to be violated, he shall make or cause to be made an investigation of the facts, including an inspection of the property where the violation may exist, and, if he finds any violation, he shall give immediate notice in writing to the owner or his duly authorized agent and to the occupant of the premises, and shall order that any violation of the provision of this By-Law shall immediately cease.
- 3. If, after such notice and order, such violation continues, or if any owner, agent or occupant fails to obey any lawful order of the Building Commissioner with respect to any violation or any use contrary to the provisions of this By-Law, the Building Commissioner shall forthwith revoke any permit issued for the occupation of the premises, shall make complaint to the Superior Court or any court of competent jurisdiction for an injunction or order restraining the further use of the premises, and shall take such other action as is necessary to enforce the provisions of this By-Law.

B. BUILDING PERMIT

- 1. Nothing herein contained shall require any change in the plans, construction, size or designated use of a building or structure, for which a building permit has been granted, or for which plans were on file with the Building Commissioner before the enactment of this By-Law, provided the construction shall have been started within 90 days of the date of the enactment of this By-Law, and which entire building shall have been completed substantially according to such plans as have been filed, within two years from the date of the enactment of this By-Law. This shall include the addition of extra stories to the buildings where provision was made therefor in the existing foundations, columns and walls.
- 2. No building permit for new building construction, excluding additions to existing structures, shall be issued until a grading plan prepared by a Registered Land Surveyor and/or a Registered Professional Engineer has been submitted to the Building Commissioner as part of the application for said building permit and approved in writing by him. The requirement for said grading plan may be waived by the Building Commissioner with the approval of the Planning Board, Board of Health and Board of Public Works. The property shall be graded as to prevent flooding, erosion, and low spots that will not drain and create a public nuisance. Where low spots cannot be avoided, they shall be drained by means of drain pipes no smaller than twelve (12) inches diameter, and catch basins or other approved inlet structure, to the nearest street drains, or other approved drainage facility.

3. Mixed Use Building Permit Limitations

a. Purpose

The purpose of the limitation (or cap) on the number of dwelling units permitted in a Mixed Use development is to promote orderly growth in a planned manner so that it will not unduly strain the community's ability to provide basic public facilities and services for an expanded residential population.

b. Applicability

This section shall apply to the issuance of all building permits for construction of dwelling units located in a Mixed Use development for which a special permit decision of the Planning Board approving such development was filed with the Town Clerk on or after the time of the adoption of this bylaw.

c. Limitations

Pursuant to Section IV.N.4., no more than 300 new dwelling units may be permitted by building permit in a calendar year. Furthermore, no more than 250 residential units may be permitted for a specific Mixed Use development project in one calendar year. In no case shall the total number of residential units in Mixed Use development, authorized under Section IV.N. herein, exceed three percent (3%) of the total number of dwelling units in the Town of Framingham.

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d. Administration

Building permits for new dwellings will be available starting on January 1 of each calendar year. Permits will be issued on a first-come, first-served basis. An applicant will not be issued a building permit for more units than has been specified in a Special Permit for Mixed Use by the Planning Board. Mixed Use development projects may be phased in over more than one year.

Applications for Mixed Use development shall be denied by the Building Commissioner when the limitation on number of dwelling units has been reached for a particular calendar year. Upon denial, an applicant may file a written request to the Building Commissioner to have the application automatically resubmitted to the Building Commissioner on January 1 of the subsequent calendar year or an earlier date, should a permit for a sufficient number of residential units under Mixed Use development become available sooner. The effective date of the application shall be the date the application is accepted for resubmission, not the original application date, and the applicant shall be subject to the State Building Code effective as of the date of building permit issuance.

Denied applications shall be taken up by the Building Commissioner in the order in which the written request for automatic resubmission has been received by the Building Commissioner, taking into account the availability of building permits for the number of residential units requested. Resubmitted applications must be complete and Special Permits must not have lapsed.

Should any building permits issued for an approved Mixed Use development for a given calendar year be withdrawn or lapse within the same calendar year, other applicants with a written request for automatic resubmission shall be taken up by the Building Commissioner as set forth above. Such permits may be issued in the same calendar year provided that the building permit limitations of this Section are not exceeded for that calendar year.

C. CERTIFICATE OF OCCUPANCY

A principal or accessory building, structure or use that is intended for occupancy, and that requires a building permit to be erected, altered or in any way changed as to construction or use, may not be occupied until an occupancy permit is issued by the Building Commissioner certifying compliance with this By-Law.

The Planning Board shall give its approval for occupancy permits for matters under its jurisdiction before a certificate of use and occupancy is issued by the Building Official.

No occupancy permit for new building construction excluding additions to existing structures shall be issued until an "asbuilt" plan prepared by a Registered Land Surveyor or Registered Professional Engineer shall have been filed with the Building Official and approved in writing by him. Said plan shall show the location of the structure, drainage patterns, location of drainage and sanitary sewerage structures above and below ground, property lines, distances of the structure to lot lines and to other buildings on the lot, and such grades and other information as the Building Official deems necessary. The construction shall conform to all setback requirements of the Zoning By-Law. The property shall be graded as to prevent flooding, erosion, and low spots that will not drain and create a public nuisance. Where low spots cannot be avoided, they shall be drained by means of drain pipes no smaller than twelve (12) inches in diameter, and catch basins or other approved inlet structure, to the nearest street drains, or other approved drainage facility.

Upon completion of foundation(s) the holder of the building permit will file an updated plot plan signed by a registered professional engineer or registered land surveyor showing that the foundation(s) has been located as specified on the approved plan. This section is not intended to include an addition to a privately owned single family residence, provided said addition conforms to all other requirements of the Building and Zoning By- Laws. The holder of said permit may proceed at his own risk.

The updated plot plan shall contain the following notation signed by the engineer or surveyor:

PLAN OF LAND FRAMINGHAM, MASSACHUSETTS

I hereby certify that the lot corners, dimensions, elevations and offsets to the proposed building or structure as shown on this plan are correct and conforming to Town of Framingham Zoning By-Laws and Regulations.

SIGNED:	_
BY:	
DATE:_	

D. BOARD OF APPEALS

I. Establishment, Membership and Rules

The Board of Appeals shall be the same Board of Appeals in existence on the effective date of this By-Law, and shall consist of three members, appointed by the Board of Selectmen for terms of such length and so arranged that the term of one member shall expire each year. Its members shall serve without compensation. Any member may be removed for cause by the Board of Selectmen upon written charges and after public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. The Board of Selectmen shall also appoint at least four associate members annually, any one of which may be designated by the Chairman of the Board of Appeals to sit on said Board because of the vacancy, inability to act, conflict of interest, or absence of a regular member. The Board of Appeals shall adopt rules consistent with provisions of this By-Law for the conduct of its business and the purposes of M.G.L. Ch. 40A and shall file a copy of such rules with the Town Clerk.

2. Powers

The Board of Appeals shall have the following powers:

- a. To hear and decide appeals in accordance with M.G.L. Ch.40A, Section 8, including the following:
 - (1) appeals by persons aggrieved by reason of their inability to obtain a permit or enforcement action from and administrative office under the provisions of M.G.L. Ch. 40A.
 - (2) appeals by persons aggrieved by an order or decision of the Building Commissioner, or other administrative official, in violation of any provision of M.G.L. Ch. 40A or of this By-Law.
 - **b.** To hear and decide applications for special permits upon which the Board is empowered to act, in accordance with the provisions of Section V.E.
 - **c.** To hear and decide applications for special permits, in accordance with the provisions of Section V.E., for the establishment of temporary structures and uses that do not conform to the uses and regulations herein prescribed, with such conditions as will protect the community, provided that no such permit shall be for more than a one-year period.
 - d. To hear and decide petitions for variances as set forth in Section V.F.

In exercising these powers, the Board of Appeals may make orders or decisions; may reverse or affirm in whole or in part or modify any order or decision of the enforcement officer or the Planning Board, except when said board is acting as a Special Permit Granting Authority; and may direct the issuance of a permit.

E. SPECIAL PERMITS

1. Special Permit Granting Authority

a. The Special Permit Granting Authority (SPGA) shall be the Board of Appeals, except where another Board or officer is specifically designated as the SPGA for a particular type of special permit.

b. The Planning Board as the SPGA:

- (1) There shall be one Associate Member of the Planning Board in cases where the Planning Board acts as the SPGA. Such position of Associate Member shall be subject to the following:
 - (a) The Associate Member shall serve by appointment made jointly by the Planning Board and the Board of Selectmen.
 - (b) Within thirty (30) days after the Town is notified that this sub-section is approved, or within thirty (30) days after this sub-section becomes effective without action by the Attorney General, the Board of Selectmen and the Planning Board shall appoint an Associate Member by majority vote of the combined membership of both Boards. The term of office of this first appointment shall expire on July 1, 1992, or until a successor is appointed and qualified. Thereafter, an Associate Member shall be appointed on an annual basis by the Board of Selectmen and Planning Board acting jointly.
 - (c) In the event of a vacancy in the position of Associate Member, the position shall be filled in the same manner as in the case of the original appointment.
 - (d) The Chairperson of the Planning Board may require such Associate Member to be in attendance at special permit hearings, and may designate such Associate Member to sit on the Board for the purpose of acting on a special permit application in the case of absence, inability to act, or conflict of interest, on the part of any member of the Planning Board, or in the event of a vacancy on the Board.

2. Procedure for Special Permit

a. Application

Prior to the filing of an application for a special permit, the applicant (as defined under Section I.E.1. of this By-Law) shall submit plans to the Building Commissioner. The Building Commissioner shall advise the applicant in writing as to the pertinent sections of the Zoning By-Law and shall determine which board is the appropriate Special Permit Granting Authority (SPGA). The applicant shall then submit four or more copies (as may be required) of the application and plans to the designated SPGA and shall forthwith file one copy with the Town Clerk. The SPGA shall transmit copies thereof to the Building Commissioner and other appropriate Town Boards and offices, as determined by the SPGA. If the Board of Appeals is the SPGA, it shall forthwith transmit copies to the Planning Board which may, within 35 days of the date of filing with the Town Clerk, submit a report to the Board of Appeals and to the applicant containing recommendations and reasons therefor to aid the Board of Appeals in judging the application. The Board of Appeals shall not hold a hearing or render a decision on any application until said report has been received and considered, or until the 35-day period has expired, whichever is earlier. Failure of the Planning Board or other Town Boards and offices to submit said report within the specified time period shall be deemed concurrence thereto.

b. Hearings

The Special Permit Granting Authority (SPGA) shall hold a hearing on said application in accordance with G. L. Ch. 40A, Section II, within 65 days of filing with the Town Clerk. Notice of such hearings shall be published by the SPGA at the expense of the applicant in a newspaper of general circulation in the Town in each of two successive weeks, the first publication to be not less than 14 days before the day of said hearing, and shall be posted in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing. Said notice shall also be sent to interested parties at the expense of the applicant not less than 14 days before the day of said hearing.

c. Decisions

The decision of the Special Permit Granting Authority (SPGA) shall be made within 90 days following the public hearing for a special permit. A special permit issued by an SPGA shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.

The Board shall make an audible audio tape recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the [SPGA] for a period of two years, and shall be made available to any person for listening or copying purposes during regular business hours in the offices of the [SPGA].

The SPGA shall also keep a detailed written record of the proceedings as required by law, copies of which shall be filed within 14 days with the Town Clerk, and notices of decisions sent to the appropriate persons as required in G.L. 40A, Section 11. Said notices shall set forth, the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the Board in said decision. Notice of the nature and vote of the decision shall be published once by the [SPGA] in a newspaper of general circulation in the Town, at the expense of the applicant, said publication to occur no more than twelve (12) calendar days after the filing of the decision with the Town Clerk. Said notices shall also be mailed to the chairperson of the precinct in which the property is located, as well as the chairperson of the Town Meeting Standing Committee on Planning and Zoning, whose names shall be provided to the [SPGA] by the Town Clerk following their election.

Any person aggrieved by a decision of a SPGA, or any municipal board or officer so aggrieved, may appeal such decision to the Superior or District Court in accordance with G.L. 40 A, Section 17.

d. Failure to Act

If the Special Permit Granting Authority shall fail to act within 90 days of the public hearing, then the application shall be deemed approved.

e. Change, Extension or Modification of a Special Permit

Any change, extension or modification of a Special Permit shall require a concurring vote of all three members of a three member board and four of the five members of a five member board.

3. Conditions of Approval of Special Permit

- **a.** The Special Permit Granting Authority shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:
 - (I) The specific site is an appropriate one for such a use or structure.
 - (2) Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. Except for residences requiring fewer than five stalls, adequacy of proposed off-street parking facilities shall be determined by the Planning Board, in accordance with the provisions of Section IV.A., IV.B., IV.C. and V.E. of this By-Law.
 - (3) The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians.
 - (4) The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law.
 - (5) All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.
- **b.** In approving a special permit, the Special Permit Granting Authority may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as:
 - (l) Requirement of screened parking areas or other parts of the premises from adjoining premises or from the street by walls, fences, planting, or other devices.
 - (2) Modification of the exterior features or appearance of the structure.
 - (3) Limitation of size, number of occupants, method or time of operation, or extent of facilities.
 - (4) Regulation of number, design, and location of access drives or other traffic features.
 - (5) A bond or other security to insure compliance with the conditions of authorization.

The applicant, when other than the owner(s), and the owner(s) of land will be responsible for mitigation measures or conditions which are required as part of a favorable decision for issuance of a special permit.

4. Repetitive Application

No application which has been unfavorably and finally acted upon by the Special Permit Granting Authority shall be reconsidered within two years after the date of final unfavorable action, unless said authority finds specific and material changes in the conditions upon which the previous unfavorable action is based, and only after notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered. Four out of five members of the Planning Board must consent to such reconsideration. The application procedure and the consent shall be in accordance with the procedures for all special permits specified in Section V.E.2. herein.

5. Expiration of Special Permit

Pursuant to MGL, Chapter 40A §9, a special permit granted under this section shall lapse within two (2) years, not including such time required to pursue or await the determination of an appeal as referred to in MGL, Chapter 40A §17, from the grant thereof, if a substantial use thereof has not sooner commenced expect for good cause, or in the case of a permit for construction, if construction was not begun by such date expect for good cause.

F. VARIANCES

l. Limitation of Use Variances

A variance authorizing a use or activity not otherwise permitted in the district in which the land is located shall be prohibited in Geriatric Care/Elderly Housing Districts, single residence and general residence districts.

2. Procedure for Variance

a. Application

Prior to the filing of a petition for a variance, the applicant (as defined under Section I.E.1. of this By-Law) shall submit a building permit application and plans to the Building Commissioner who shall advise the applicant in writing as to the sections of the Zoning By-Law with which the application and plans are not in compliance. The applicant shall then file six copies of an appeal or petition for a variance with the Town Clerk, who shall forthwith transmit copies of the application and accompanying plans to the Board of Appeals, Planning Board, Planning Department, Town Counsel, and Building Commissioner. The Planning Board may, within 21 days of the date of filing with the Town Clerk, submit a report to the Board of Appeals containing recommendations and reasons therefor to aid the Board of Appeals in judging the application. The Board of Appeals shall not hold a hearing or render a decision on any appeal or petition for a variance until said report has been received and considered or until the 21-day period has expired, whichever is earlier. Failure of the Planning Board to submit said report within the specified time period shall be deemed concurrence thereto.

Petitioning for a variance under the procedures of this Section and a subsequent approval of such variance by the Board of Appeals does not supersede the requirement to obtain a Special Permit for Off-Street Parking, as applicable, under the procedures of Sections IV.A., IV.B., IV.C. and V.E. of this By-Law.

b. Hearings

The Board of Appeals shall hold a hearing on said appeal or petition for a variance within 65 days of the date of filing with the Town Clerk. Notice of such hearings shall be published by the Board of Appeals in a newspaper of general circulation in the Town, at the expense of the applicant, in each of two successive weeks, the first publication to be not less than 14 days before the day of said hearing. Said notice shall also be sent to interested parties, as defined herein, not less than 14 days before the day of said hearing.

c. Decisions

The decision of the Board of Appeals shall be made within 100 days after the date of filing of any appeal or petition for a variance with the Town Clerk. The concurring vote of all of the members of the Board shall be necessary to render a decision on any appeal or petition for a variance.

The Board shall make an audible audio tape recording of all its proceedings and deliberations. Such recordings shall be kept in the offices of the Zoning Board of Appeals for a period of two years, and shall be made available to any person for listening or copying purposes during regular business hours in the offices of the Zoning Board of Appeals.

The SPGA shall also keep a detailed written record of the proceedings as required by law, copies of which shall be filed within 14 days with the Town Clerk, and notices of decisions sent to the appropriate persons as required in Massachusetts General Laws, Chapter 40A, Section 15. Said notices shall set forth, the nature and vote of the decision, the reasons therefor, and any conditions and safeguards prescribed by the Board in said decision. Notice of the nature and vote of the decision shall also be published once by the Board of Appeals in a newspaper of general circulation in the Town, at the expense of the applicant, said publication to occur no more than twelve (12) calendar days after the filing of the decision with the Town Clerk. Said notices shall also be mailed to the chairperson of the precinct in which the property is located, as well as the chairperson of the Town Meeting Standing Committee on Planning and Zoning, whose names shall be provided to the Zoning Board of Appeals by the Town Clerk following their election.

d. Failure to Act

If the Board of Appeals shall fail to act within 100 days after the date of filing of any appeal and petition for a variance, then the application shall be deemed approved.

3. Conditions of Issuance of Variances

The Board of Appeals may authorize a departure from terms of this By-Law, except as limited above, provided that each of the following conditions is met:

- (1) There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the variance is being sought.
- (2) Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- (3) Owing to such circumstances, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
- (4) The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the purpose and intent of this By-Law or from the intent of the district in which the variance is being sought.

4. Variances in Floodplain Districts

- **a.** The Board of Appeals may grant a variance from Section III.H.3. e and f. (floodplain management regulations) in the following circumstances.
 - (1) A variance may be issued for new construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing buildings constructed below the base flood level, in conformance with section 3 above and in conformance with sections b., c., and d. below.
 - (2) The granting of the variance shall not result in increased flood heights, additional threats to public safety, or extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with state or local laws or ordinances.
 - (3) A variance may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) The ZBA shall notify the applicant in writing that the issuance of a variance to construct a building below the base flood level and/or lacking adequate floodproofing will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and that such construction increases risks to life and property.
- b. A Variance may be granted for construction on a lot that does not comply with section a.l. above, but only in extraordinary and exceptional circumstances. In such cases the ZBA should be aware that the Federal Insurance Administrator may review the findings justifying the granting of such variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Town's participation in the Flood Insurance Program may be jeopardized.

- **c.** Variances may be issued by the ZBA for the reconstruction, rehabilitation, or restoration of buildings listed on the National Register of Historic Places, or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
- d. Variances shall not be granted by the ZBA within any designated regulatory floodway under any circumstances.

5. Repetitive Petition

No appeal or petition for a variance which has been unfavorably and finally acted upon by the Board of Appeals shall be reconsidered within two years after the date of final unfavorable action unless said Board finds specific and material changes in the conditions upon which the previous unfavorable action was based, subject to consent of four out of five members of the Planning Board, and only after notice is given to interested parties of the time and place of the proceedings when the question of such consent is considered.

G. REPETITIVE PETITION

No proposed By-Law (amendment) making a change in the Zoning By-Law, which has been unfavorably acted upon by a Town Meeting, shall be considered on its merit by the Town Meeting within the two years after the date of such unfavorable action unless the adoption of such proposed By-Law (amendment) is recommended in the final report of the Planning Board as required by Section 5 of Chapter 40A.

H. PENALTY

Whoever violates any provision of this By-Law or any of the conditions under which a permit is issued by the Building Commissioner, or any decision rendered by the Board of Appeals or the Planning Board under the provisions of this By-Law shall be liable to a fine of not more than three hundred dollars for each violation. Each violation of this By-Law shall constitute a separate offense. Each day that any such violation shall continue shall constitute a separate offense.

I. SEPARABILITY

Should any section or provision of this By-Law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the By-Law as a whole or in part thereof other than the part so decided to be unconstitutional or invalid.

J. AMENDMENT

All costs incidental to alteration or amendments to these By-Laws shall be paid by the Town.

K. EFFECTIVE DATE

The effective date of the adoption or amendment of this Zoning By-Law shall be the date on which such adoption or amendment was voted upon by Town Meeting, provided that subsequent to that date the requirements of G.L. Ch.40 Section 32 regarding publication are followed.

L. NOTIFICATION OF PUBLIC HEARINGS

In all cases where public hearings are required, notice of such hearings shall be given by the responsible Board and at the expense of the applicant by publication in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of such hearing. Said notice shall be sent to interested parties by mail, which shall include Town Meeting Members from precincts affected, petitioners, abutters, owners of land directly opposite on any public or private street or way and owners of land within three hundred feet of the property line all as they appear on the most recent applicable tax list, the Planning Board of the town, and the planning boards of communities abutting the town.